



1540 Broadway
23rd Floor
New York, NY 10036

646.927.5500 main
646.927.5599 fax

August T. Horvath
646-927-5544

June 8, 2018

Via ECF

Honorable Jack B. Weinstein, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Leguette v. Schwan's, Case No. 2:17-cv-07599-JBW-ST –
Request for Extension of Time to Respond to Amended Complaint (with
Consent)

Dear Judge Weinstein:

We are counsel for the remaining Defendant, Schwan's Consumer Brands, Inc. ("Schwan's"), in the above-captioned case. Plaintiffs filed an Amended Complaint on June 7, 2018 (Dkt. No. 17). Schwan's respectfully requests 60 days to respond to the Amended Complaint instead of the 14 days provided by Fed. R. Civ. P. 15 (which would result in a deadline of June 21). Schwan's response would be due August 6, 2018, with this extension. There have been no prior extensions of this deadline, and Plaintiffs, through their counsel, have consented to this extension. As grounds for this extension, the Amended Complaint substantially expands the original Complaint (Dkt. 1), introducing new claims and theories of deception and lodging new claims under the law of Florida, which will require additional time for Schwan's to conduct legal research and formulate its defense.

Specifically, first, the Amended Complaint adds a new theory, entitled "Non-Butter Claims." (Am. Compl., Dkt. No., 17, ¶¶ 62-86.) This section alleges, for this first time, that Schwan's pie fillings contain citric and/or other acids not listed in their FDA-mandated ingredient statements. The original Complaint addressed only the pie crust and did not allege this theory of undisclosed acid ingredients in the filling.

Second, Plaintiffs attempt to bolster the original butter-based claims regarding the pie crust with new factual allegations, including regarding the conversion of water to steam, the effect of emulsifiers on whether a crust is "flaky," and a purported calculation of the amount of butter in Defendants' pies based on their Vitamin A content. Plaintiffs also now allege that Schwan's presents the crust ingredients in the FDA-mandated ingredient statement in an unlawful and misleading way. None of these allegations was in the original Complaint.

Third, Plaintiffs now include an additional named plaintiff in Florida, and the Amended Complaint adds claims based on Florida statutory and common law. (Am. Compl. ¶¶ 110-116.)

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The original Complaint alleged only violations of New York law. This expansion of the case will require Schwan's to research Florida's Deceptive and Unfair Trade Practices Act and common law in order to respond.

In light of the ways in which this Amended Complaint significantly transforms and expands the theory of the original Complaint, Schwan's will require additional time to analyze, research and respond to it. The extension being requested by Schwan's, to 60 days after the filing of the Amended Complaint, matches the period typically allowed to respond when a defendant agrees to waive service of a newly filed complaint pursuant to Fed. R. Civ. P. 4(d)(1)(F).

Schwan's appreciates the Court's attention to this request.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "August T. Horvath".

August T. Horvath (AH 8776)
FOLEY HOAG LLP

*Attorneys for Defendant Schwan's Consumer
Brands, Inc.*